IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 46 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

HARIRAM KHIMKARAN BAROT FAMILYTRUST - Respondent(s)

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Appearance :
MRS MM BHATT FOR MR MANISH R BHATT for Applicant
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “B” has referred the following question under Section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether the Appellate Tribunal is right in law in deleting the addition of Rs.6,52,500/- made u/s 40A(3) of the I.T.Act, 1961?”

2.The Assessment Year is 1981-82 and the relevant accounting period is year ended on 30th June 1980. As can be seen from the facts on record, the assessee firm had made cash payments totalling to Rs.19,72,500/- to M/s Sonal Gum Industries. While framing the final assessment under Section 143(3) read with Section 144B of the Act, the Assessing Officer restricted the disallowance under Section 40A(3) of the Act to Rs.6,52,500/- and made the addition. The

Commissioner (Appeals) relied upon decision of this Court in the case of Hasanand Pinjomal v. Commissioner of Income-Tax, Gujarat, [1978] 112 ITR 134 and deleted the entire addition. The Tribunal, having concurred with the findings recorded by the CIT (Appeals), dismissed the departmental appeal.

3.Heard Mrs.M.M.Bhatt, the learned standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the assessee.

4.On going through the impugned order of Tribunal, it is apparent that the Tribunal has, after setting out the principles laid down by this Court, applied the same to the facts found on record. It has been found by the Tribunal, after appreciating the evidence on record, that (1) the identity of the payee was established, (2) genuineness of the transaction was not in

doubt, (3) the payment had been made in exceptional and unavoidable circumstances, and (4) the payment had been made as demanded by the payee. It has further been found by the Tribunal on appreciation of evidence on record that the payee had demanded the payment in cash due to necessity of retiring of Hundies through banking channels, getting the railway receipts released etc.

5. On behalf of the revenue, nothing has been brought on record to dislodge the aforesaid findings of fact arrived at after appreciation of evidence on record. In the circumstances, the Tribunal was right in deleting the addition made by invoking the provisions of Section 40A(3) of the Act. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference stands disposed of accordingly.

There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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